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Supreme Court of the United States

OCTOBER TERM, 1957

No. 609

CLARENCE B. DANDRIDGE, PETITIONER

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petition for certiorari filed August 6, 1957
Certiorari granted November 12, 1957

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 609

CLARENCE B. DANDRIDGE, PETITIONER

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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1 IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX OF COUNSEL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Indictment—Filed Sept. 4, 1956
Joint Appendix of Counsel

Grand Jury Impanelled June 28, 1956, Sworn in on July 3, 1956

THE UNITED STATES OF AMERICA

v.

CLARENCE B. DANDRIDGE

CRIMINAL No. 906-56

GRAND JURY No. 1043-56

ASSAULT WITH A DANGEROUS WEAPON

CARRYING A DANGEROUS WEAPON

(22 D.C.C. 502, 3204)

The Grand Jury charges:

On or about July 8, 1956, within the District of Columbia, Clarence B. Dandridge made an assault on Robert W. Allen with a dangerous weapon, that is, a loaded pistol.

SECOND COUNT:

On or about July 8, 1956, within the District of Columbia, Clarence B. Dandridge did carry, openly and concealed on or about his person, a dangerous weapon, that is, a pistol without a license having been issued as provided by law.

A True Bill:

s/ Oliver Gasch
Attorney of the United States
and for the District of Columbia

s/ LEO F. DODD
Foreman.

IN THE UNITED STATES DISTRICT COURT

Plea of Not Guilty by Defendant—Filed Sep. 7, 1956

On this 7th day of September, 1956, the defendant Clarence B. Dandridge, appearing in proper person and without counsel present, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the District of Columbia Jail.

By direction of
BOLITHA J. LAWS
Presiding Judge
Criminal Court No. One

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2 IN THE UNITED STATES DISTRICT COURT

Withdrawal of Plea—Filed Oct. 16, 1956

On this 16 day of October, 1956, the defendant Clarence B. Dandridge, appearing in proper person and by his attorney H. N. Blaustein, in open Court withdraws his plea of not guilty to the indictment heretofore entered and pleads guilty to Count One of the indictment.

The case is referred to the Probation Officer of the Court and the defendant is remanded to the District of Columbia Jail.

By direction of
ALEXANDER HOLTZOFF
Presiding Judge
Criminal Court No. One

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALEXANDER HOLTZOFF
Judge

Memorandum of Judge Holtzoff for the Assignment Commissioner—Oct. 24, 1956

Re: Clarence B. Dandridge

Cr. Case No. 906-56

Please treat the annexed letter from the defendant, dated October 21, 1956, as a motion for leave to withdraw a plea of guilty, and set it down before me for this Friday, and notify counsel for both sides.

s/ AH
ALEXANDER HOLTZOFF
906-56
Oct 21. 1956
Washington D C

Judge Holtzoff Your Honor Sir

I am writing *asking to change my plea of guilty to not guilty.* At the time I am writing this letter I am much better than I was on the 16th of Oct 1956 the day I plea guilty to the charge of assault with a dangerous weapon that is a loaded pistol. And at the time I plea guilty to the charge I was sick and was not myself. And on the next day which was the 17th Oct I became more sick and on the 18th Oct. they had to send me to the hospital which I am still is in the hospital.

3 And on the 13th Sept 1956 that was the first time I taken sick and was in the hospital from 13th Sept until Oct 1st 1956. My lawyer tell me I have a felony charge against me which was a number charge in 1948 Your Honor Sir sentence me to two to six months in jail. Is that a felony charge on my record. So I come to a close.

CLARENCE B. DANDRIDGE,
DCDC 20124-CB-2-Cell 107
District Jail Washington D C

IN THE UNITED STATES DISTRICT COURT

Order Denying Motion for Leave to Withdraw Plea of Guilty—Nov. 2, 1956

On this 2nd day of November, 1956, came the attorney of the United States; the defendant in proper person and by his attorney, H. N. Blaustein, Esquire; whereupon the motion of the defendant, for leave to withdraw his plea of guilty heretofore entered, after argument by counsel, is by the Court denied.

The defendant is remanded to the District of Columbia Jail.

By direction of
ALEXANDER HOLTZOFF
Presiding Judge,
Criminal Court No. 1

IN THE UNITED STATES DISTRICT COURT

Order Dismissing Remaining Counts of Indictment—Dec. 7, 1956

On this 7th day of December, 1956, came the attorney of the United States; the defendant in proper person and by his attorney, H. Nathaniel Blaustein Esquire; and upon consideration of the government's oral motion for leave to dismiss remaining counts of the indictment in the above entitled case, it is ordered that leave to dismiss remaining counts of the indictment be and the same is hereby granted.

Whereupon the United States Attorney dismisses remaining counts of the indictment in the above entitled case in open Court.

By direction of
ALEXANDER HOLTZOFF
Presiding Judge

IN THE UNITED STATES DISTRICT COURT
UNITED STATES OF AMERICA

v.

CLARENCE B. DANDRIDGE

Judgment and Commitment—Dec. 13, 1956

On this 7th day of December, 1956 came the attorney for the government and the defendant appeared in person and[1] by counsel, H. Nathaniel Blaustein, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of[2] guilty of the offense of

ASSAULT WITH A DANGEROUS WEAPON

as charged[3] in Count One

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4]

Three (3) years to Nine (9) years.

IT IS ORDERED that the Clrek deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

s/ ALEXANDER HOLTZOFF
United States District Judge.

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[1] Campbell, *Urology*, vol. I, p. 693 (1954 Ed.).

[2] ibid, 693.

IN THE UNITED STATES DISTRICT COURT

Letter from Defendant to Clerk, U. S. District Court—Received and Filed Dec. 20, 1956

Washington, D. C.
Dec 13 1956

Mr. Harry M. HULL. D.C. Jail Criminal 906-56

I am writting to appeal my case on the ground insufficient consul. That he advise me to plea guilty to assault with a dangerous weapon that is a load pistol so that they would drop the charge of carrying a dangerous weapon. I had been sick in hospital here in jail since 13th of Sept 1956 to the first of Oct. 1956.

And my trial was be on the 4th Oct 1956 and the first time I seen my attorney was on Oct 2th 1956. And I answer my indictment on the 6th of Sept 1956 and on the 4th of Oct 1956 I went to court but they did not have the trial and I did see my lawyer either. So on the 16th Oct 1956 I went back to court and I was sick at the time I plead guilty to assault with a dangerous weapon.

And with in 48 hours after I plead guilty I was carried back to hospital on stretch and was given penucilen and ice pack for three days and I begin to feel better and then I realised what I had did so on the 21st 1956 of Oct I written to Honorable Judge Alexander Holtzoff telling him I was sick at the time I plea guilty I was not my self. So on Nov first 1956 I was back in Court to see Honorable Judge Alexander Holtzoff to tell him why I want to change my plea of guilty to not guilty, I try to explain to him but I just could get the words together. Because I was still sick and was still in the hospital. And he asking attorney about it and all he said was he did know anything abut I want to change my plea and so Judge Holtzoff deny my plea. As my attorney is a court appoint attorney. And on the 7th Dec. 1956 I was sentence by Honable Judge Alexander Holtzoff to three to nine years.

CLARENCE B. DANDRIDGE
DC DC 20124-CB-2-Cell 225
200 19th St. S.E. Washington DC

IN THE UNITED STATES DISTRICT COURT

Affidavit in Support of Application for Leave to Proceed Without Prepayment of Costs—Received and Filed Jan. 2, 1957

I, Clarence B Dandridge, being first duly sworn according to law, deposes and say that I am the defendant in the above-entitled cause, and, in support of my application for leave to proceed in said cause without being required to prepay fees or costs, state as follows:

1. That I am a citizen of the United States.

2. That because of my poverty I am unable to pay the cost of said suit or action.

3. That I am unable to give security for the same.

4. That I believe I am entitled to the redress I seek in said suit or action.

5. That the nature of my cause of action is briefly stated as follows:

s/ CLARENCE B. DANDRIDGE

6 Subscribed and sworn to before me this 31st day of December 1956.

s/ GEORGE E. STOKES
Notary Public, D. C.

IN THE UNITED STATES DISTRICT COURT

Denial of Application to Proceed in Forma Pauperis and Certification That Appeal Is Not Taken in Good Faith—Jan. 8, 1957

The defendant's application to proceed without prepayment of costs is denied. I certify the appeal is not taken in good faith.

s/ ALEXANDER HOLTZOFF
Judge

IN THE UNITED STATES DISTRICT COURT

Memorandum Denying Motion to Withdraw Plea of Guilty—Jan. 2, 1957

Motion to withdraw plea of guilty, filed on December 20, 1956, is denied. This is a reptition of a prior motion.

s/ ALEXANDER HOLTZOFF
United States District Judge.

January 2, 1957.

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Transcript of Proceedings of October 16, 1956

The above-entitled matter came on for trial before THE HONORABLE ALEXANDER HOLTZOFF, United States District Judge, at 1:45 o'clock p.m.

Appearances:

On behalf of the Government:

ALEXANDER L. STEVAS,
Assistant United States Attorney.

On behalf of the defendant:

H. NATHANIEL BLAUSTEIN,
Esquire.

7 **Colloquy Between Court and Counsel**

The Deputy Clerk: The case of United States vs. Clarence B. Dandridge.

Mr. Stevas: Ready for the Government, Your Honor.

Mr. Blaustein: Ready for the defendant.

The Court: Will counsel come to the bench, please.

(At the bench:)

The Court: What is the nature of this case?

Mr. Stevas: This is the case where the defendant Clarence B. Dandridge, is charged with assault with a dangerous weapon, that is, a pistol, and the second count charges him with carrying a dangerous weapon, to-wit, a pistol.

I have informed counsel for the defendant the Government would have no objection to letting him plea to the first count and move to dismiss the second count at the time of sentencing if there was such an indication on the part of the defendant.

The Court: What are the facts, Mr. Stevas?

Mr. Stevas: The evidence will show, if Your Honor please, that the complaining witness was in the premises, the first floor of the same building that the defendant lived in. The defendant lived in the basement.

Without any altercation taking place at the time of the shooting, from the Government's evidence it will show that the defendant fired a pistol at the complaining witness and that he was in excess of 18 inches distant because there were no powder burns on the complainant. The bullet struck the complainant in the left shoulder.

The Court: He was actually wounded?

Mr. Stevas: Yes, he was wounded by the bullet.

We can find no argument that preceded this except the fact that the Government's evidence will show a statement by the defendant that, "You beat me up before and you are not going to do it again."

Those, very briefly, are the facts.

The complainant fell down when he was shot. The defendant was apprehended shortly afterward in possession of the gun.

The Court: How do you feel about this, Mr. Blaustein?

Mr. Blaustein: The defendant's testimony would be that, on the night before, he was struck by the prosecuting witness, had a black eye and a fractured nose. During the following day, there were two other attacks on him and this last one, I suppose he was a little upset after being attacked three times and, unfortunately, he pulled this gun out and shot this man.

8 The Court: Of course, that is no defense. Those matters might go into mitigation of sentence but certainly it is not self-defense.

Mr. Blaustein: I agree with Your Honor, except he does say that the prosecuting witness has frequently carried a razor.

The Court: No. The prior assaults by the victim of an assault is not sufficient to justify self-defense.

Do you want to go to trial or are you interested in what Mr. Stevas has suggested?

Mr. Blaustein: Yes, Your Honor, I think the defendant is but I would want to talk to him another minute or two.

The Court: Of course.

(Counsel conferred with defendant.)

Mr. Blaustein: Your Honor, the defendant will withdraw his plea of not guilty.

The Court: Very well.

(In open court:)

Mr. Stevas: If Your Honor please, in Criminal Case No. 906-56, United States vs. Clarence B. Dandridge, Mr. Blaustein represents the defendant in this case.

I have been informed by Mr. Blaustein that the defendant at this time is desirous of changing his plea under the first count of the indictment from not guilty, changing that plea to one of guilty with the understanding that at the time of sentencing the Government will move to dismiss the second count charging him with carrying a dangerous weapon, to-wit, a pistol.

I have been advised the defendant has been advised on his right to a jury trial; no promises have been made to the defendant and I understand he desires to enter this plea freely and voluntarily of his own free will and accord.

That plea would be acceptable to the Government because the second count is part and parcel of the first count.

The Court: I will hear defendant's counsel.

Mr. Blaustein: If the Court please, I have fully explained the circumstances and the consequences of this act to the defendant. I asked him to voluntarily make up his mind as to what he wanted to do. He has come to the conclusion that he will throw himself upon the mercy of the Court.

The Court: Have you apprised him of his rights?

Mr. Blaustein: I certainly have, Your Honor.

The Court: Clarence B. Dandridge, do you admit that you committed the offense to which you propose to plead guilty.

The Defendant: Yes, sir.

The Court: The Court will accept the plea.

The Deputy Clerk: Clarence B. Dandridge, in Criminal

No. 906-56 in which you are charged with assault with a dangerous weapon, do you wish to withdraw your plea of not guilty heretofore entered and enter a plea of guilty to Count 1 which charges you with assault with a dangerous weapon?

The Defendant: Count 1, yes, sir.

The Court: The case will be referred to the Probation Officer for the usual presentence investigation.

(Thereupon, the hearing was concluded.)

IN THE UNITED STATES DISTRICT COURT

Proceedings of Nov. 2, 1956

10 o'clock a.m.

Colloquy Between Court and Counsel

The Court: In this case, the defendant pleaded guilty on October 16 to the first count of the indictment charging assault with a dangerous weapon, that is, a loaded pistol. He did so after being advised by counsel as to his rights and his counsel appeared with him at the time that he changed his plea.

The Court expressly asked him whether he committed the offense to which he desired to plead guilty and he answered expressly in the affirmative. At that time, the Government was ready to go on and had its witnesses in the Court House. These witnesses, of course, were immediately dismissed after the plea was entered.

Since that time, however, the Court received a letter dated October 21 from this defendant asking to change his plea of guilty to not guilty. The Court ordered the letter to be treated as though it were a formal motion and set this down for this morning.

Clarence B. Dandridge, why do you ask for permission to change your plea? You pleaded guilty knowingly and you expressly admitted to the Court, when asked, that you committed the offense.

Why are you asking permission to change your plea?

The Defendant: At the time I hadn't seen no attorney and I was sick.

The Court: At that time, you had an attorney, of course.

The Defendant: I mean on July 9, I had an attorney at the Court, the first date, and I haven't seen him no more since.

The Court: The Court appointed an attorney for you who consulted with you and who appeared with you at the time you changed your plea. I want to know why you are asking permission to change your plea.

The Defendant: Because I couldn't get my witnesses together at the time because of being sick and nervous. I couldn't think of the addresses. There are two witnesses. I was sick. I came out on the 1st and I met my attorney on the 2nd and the trial was set for the 4th.

The Court: When the Court asked you if you committed the offense, you said yes, that you did.

The Defendant: I couldn't get my witnesses here.

The Court: What is your defense?

The Defendant: I have witnesses to prove that I did it in my self-defense. I mean I couldn't get the names. My wife knew them at the time.

The Court: Suppose you tell me what you claim to be self-defense.

The Defendant: He had been beating me three times that day and came across the street and I said I will wait until he leaves before I go home. Then when I went home, he started to bet me again. That is the time I shot him. Where I live, he beat me three times in my own house and the officers, when I went to court, I had two black eyes and a fractured nose and so at the time, being sick—

The Court: Then you fired your gun at him, didn't you?

The Defendant: Yes, when he started to me, yes.

The Court: What did he beat you with?

The Defendant: I don't know. I had a fractured nose and two black eyes.

The Court: With his fist?

The Defendant: I guess so. I was trying to get out of his way each time, three separate times.

The Court: The Court was informed at the time that your plea was entered that the man you shot has become paralyzed as a result of your shooting him.

The Defendant: I heard that too, sir.

The Court: Does counsel for the defendant wish to say anything?

Mr. Blaustein: Frankly, I have nothing to say, Your Honor. I went over this matter entirely with him before he entered his plea of guilty. He knew the circumstances and I believe we explained all of that to Your Honor at the time and I was very much surprised when he wanted to change his plea.

11 However, I interviewed several of the witnesses and I could not get any material evidence out of them that I felt would be helpful to him, even his own wife. However, if he has discovered some other witnesses and he wants to go to trial and the Court feels he should go to trial, I am prepared.

The Defendant: I have two more witnesses.

The Court: What will they testify to?

The Defendant: That this Allen witness will testify that he came across the street after me so that he could stop this fellow from fighting me. I asked him why he didn't want me to go home and he said, "Robert was waiting to fight me." And I said, "I will wait until he goes."

The other witness was when he was taking me to headquarters. I asked him to take me to give the gun up. The old little lady where I lived, she was nervous, I would never have left the house. I stayed there until the law come.

The Court: You have not said anything to justify the shooting.

I will hear Government counsel.

Mr. Stevas: If Your Honor please, you will recall we had our witnesses here. The complainant was here in a wheelchair. Counsel for the defendant approached the bench, Your Honor will recall, and discussed the possibility of his client to change his plea.

I asked Your Honor to have the record indicate, and the record did indicate, that counsel took an opportunity to discuss the matter over further with his client before this plea was entered. After a short interval, when he did discuss it with his client, the defendant was then brought forward.

I made the statement that he was pleading because I was informed that he was going to plead because he was guilty and for no other reason.

The witnesses were here, the jury was here and we were ready to proceed. Notwithstanding that, the defendant chose to change his plea and enter a plea of guilty because he was guilty and for no other reason.

The Government feels, at this stage now, we having been ready for trial, that the plea should stand. It was intelligently entered at the time.

The record will show the case was up on October 4 and was continued on that date until October 16, almost two weeks later from the date of October 4 and the same counsel represented the defendant but no court was available on October 4.

In view of all those circumstances, the defendant having been indicted in this case in September and counsel appointed in September, he had adequate opportunity to consult with him, but from what he says today, there is no evidence from the witnesses that he proposes to call, that they would not even testify to any issue of self-defense because what they are testifying to is what occurred even prior to this shooting which took place in the home.

The Court: The Court is of the opinion that the ends of justice do not require that the defendant be permitted to withdraw his plea of guilty. He entered the plea deliberately. He expressly admitted his guilt in open court and now, on his own statement, he does not set forth sufficient facts which would warrant a plea of self-defense. He does not deny that he shot the complaining witness but he claims that he did so in self-defense but, on his own statement of the facts, even if those facts were as he contends them to have been, they are not sufficient justification for a plea of self-defense. In any event, certainly he did not think there was when he pleaded guilty.

The motion for leave to change the plea is denied.

(Thereupon, the hearing was concluded.)

/s/ JEANETTE RAWLS
Official Court Reporter

Court Reporter's Certificate (omitted in printing)

13 IN UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUT

No. 13813

CLARENCE B. DANDRIDGE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Opinion—Decided July 8, 1957

Mr. Bernard Dunau (appointed by this Court) for appellant.

Mr. Alfred Burka, Assistant United States Attorney, with whom *Messrs. Oliver Gasch,* United States Attorney, *Lewis Carrol* and *Alexander L. Stevas,* Assistant United States Attorneys, were on the brief, for appellee.

Before EDGERTON, *Chief Judge,* and PRETTYMAN and BURGER, *Circuit Judges.*

PER CURIAM: Appellant urges that the District Court abused its discretion in denying his motion to withdraw a plea of guilty to a charge of assault with a deadly weapon contemporaneous with dismissal of a charge of carrying a dangerous weapon.

A hearing was conducted in which the District Judge questioned appellant and his counsel on the circumstances surrounding the making of a plea of guilty before he denied the motion. We find no abuse of discretion.

Affirmed.

Edgerton, Chief Judge, dissents.

14 IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,813

CLARENCE B. DANDRIDGE, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Before: EDGERTON, *Chief Judge*, and PRETTYMAN and BURGER, *Circuit Judges*.

Judgment—July 8, 1957

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment——of the said District Court appealed from in this cause be, and the same is hereby,

Affirmed.

Dated: Jul 8, 1957

Chief Judge Edgerton dissents.

PER CURIAM.

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15 IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Motion for Leave to File Affidavits—Filed May 7, 1957

Appellant moves the Court for leave to file the annexed affidavits of appellant and of his attorney, Bernard Dunau.

1. The affidavit of appellant sets forth matter relevant to his representation in the District Court, the circumstances under which he pleaded guilty to the charge of assault with a dangerous weapon, and the facts underlying his claim of self-defense.

2. The affidavit of Bernard Dunau incorporates medical reports received by him, pertaining to appellant, from the District of Columbia General Hospital and the District of Columbia Jail Infirmary.

3. As a result of the abbreviated character of the proceedings in the District Court, there was a failure to develop facts which should have been adduced there and which should be before this Court in its consideration of the appeal. The attached affidavits attempt to remedy this lack.

Wherefore, this motion should be granted.

/s/ Bernard Dunau
912 Dupont Circle Building, N.W.
Washington 6, D. C.

(Certificate of service omitted in printing)

---

16 **Affidavit of Clarence B. Dandridge—Filed June 19, 1957**

I, Clarence B. Dandridge, being duly sworn, do depose and say that:

1. I saw my attorney, H. N. Blaustein, whom the Court appointed for me, for the first time on October 2, 1956. We were together about 30 minutes. I saw him again the next day, October 3, 1956, for about 40 or 50 minutes. I did not see him again until October 16, 1956, the day I pleaded guilty. After that, I did not see him again until November 2, 1956, when he was in the courtroom while I was trying to explain to Judge Holtzoff why I wanted to change my plea from guilty to not guilty. I did not speak to him at all between October 16 and when I saw him in the courtroom on November 2.

2. When I saw my attorney for the first time on October 2, 1956, he suggested that I should plead guilty to the assault charge if the Government would drop the gun carrying charge. I told him that I would not plead guilty to the assault charge because I was not guilty of assault. I told him I might plead guilty to the gun carrying charge if the assault charge were dropped. He said he would speak to the United States Attorney.

The next day, October 3, my attorney told me that the Government would not drop the assault charge. My attorney recommended that I plead guilty to the assault charge and the Government would drop the gun carrying charge.

He said that it would save the Government the cost of a trial, and the sentence would be more lenient. I told him no; I wouldn't plead guilty to the assault charge; I wasn't guilty of it. I told him I would rather go to trial.

3. The trial was set for the next day, October 4, and I was feeling pretty good, but the trial was not held on that day. The next time I was to have the trial was October 16. I was sick on that day. I was nervous and shaky. I was upset with pain. I couldn't pass water. I was a perfect wreck. I had sweat spells. My words weren't plain. I couldn't put my words together. I was in such pain, to get it over with, I pleaded guilty.

4. I am 46 years old, born August 3, 1910, in Fredericksburg, Virginia. I am 5 feet, 8 inches tall. On July 8, 1956, I weighed about 160 pounds. Robert Allen, the person who beat me, is 5 feet, 9 inches tall, weighs at least 190 pounds, and is 42 years old. He is heavily built, broadchested. I am no match for him.

17 5. Robert Allen assaulted me four times on July 8, 1956. Each assault took place on the first floor of the house where I live. I have my quarters in the basement. When you come into the front door of the house, there is the front room. Beyond the front room there is the dining room. Off the dining room is the kitchen. The door to the stairs which lead to my quarters in the basement is in the dining room. Robert Allen does not live in this house.

6. The first time that Allen hit me was at about 12:20 a.m., Sunday morning, July 8, 1956. I did nothing to cause Allen to hit me. I was watching television. Allen asked me to come over to him. I said in a minute. The next thing he hit me.

He smacked me across my mouth and nose with his fist or hand. He hit me once with one hand or fist, and then he hit me again with the other hand or fist. He drew blood. My lip swelled up. Taylor, who is a friend of both of us, separated Allen from me.

7. The second time that Allen hit me was at about 8:00 a.m., Sunday morning, July 8, 1956. He hit me in the nose and eye. He blackened my left eye. He fractured my nose.

He hit me a great number of times. He knocked me back on the edge of the dining room table. Taylor separated Allen from me.

8. The third time that Allen hit me was at about 1:00 p.m., Sunday July 8, 1956. He struck me in the right eye and blackened it. He struck me a number of other times. Taylor again separated Allen from me.

9. At about 10:30 p.m., Sunday night, July 8, 1956, I was visiting in a house across the street from where I live. Taylor came in to say that Allen was waiting for me, that he was going to fight me. I told Taylor to go to my house and take Allen to his house, and then I would go home. Taylor said all right.

Shortly before midnight, Sunday, July 8, 1956, I went home. As I was trying to open the door in the dining room which leads to the stairs to my quarters in the basement, Allen rushed towards me with his right hand up. There was something in his right hand which was shining. I knew he carried a razor; he showed it to me many times.

I shot Allen to defend myself. He fell on my left foot.

18 10. I don't know why Allen kept on assaulting me. Allen had been drinking; I could tell by his eyes and what he did. He spoke a lot on that day and he usually is quiet. Allen told Taylor, and Allen also told my wife, that he had been drinking. Allen told Taylor, and Taylor told my wife, that it was Allen's fault. Allen sent word this way several times to say that it was his fault. Allen said that he did not want to press charges.

11. Everything in this affidavit, from paragraphs 4 through 10, except Allen's height and weight, I told to my attorney, H. N. Blaustein, on October 3, 1956.

And further deponent sayeth not.

/s/ Clarence B. Dandridge

Sworn to and subscribed before me this 25th day of April, 1957, at Washington, D. C.

/s/ George E. Stokes
Notary Public
My Commission expires Oct. 31, 1960.

19 **Affidavit of Bernard Dunau—Filed June 19, 1957**

I, Bernard Dunau, being first duly sworn, do depose and say that:

1. On April 22, 1957, I wrote to the District of Columbia Jail Infirmary requesting a report covering the hospitalization of appellant in that institution. On April 25, 1957, I received from the senior medical officer of that institution, Dr. Richard V. Mattingly, a report dated April 24, 1957, attached hereto as Exhibit A. On April 25, 1957, I wrote Dr. Mattingly requesting further information. This letter is attached hereto as Exhibit B. On April 29, 1957, I received a further report from Dr. Mattingly, dated April 26, 1957, attached hereto as Exhibt C.

2. On April 22, 1957, I wrote to the District of Columbia General Hospital requesting a report covering the hospitalization of appellant in that institution. On May 4, 1957, I received from it a report dated May 3, 1957, attached hereto as Exhibit D.

And further deponent sayeth not.

/s/ Bernard Dunau
Bernard Dunau

Sworn to and subscribed before me this 6 day of May, 1957, at Washington, D. C.

(SEAL) /s/ Dorothy M. Sutton

My Commission Expires Aug. 14 1957

20 **Exhibit "A" to Affidavit**

GOVERNMENT OF THE
DISTRICT OF COLUMBIA
THE DEPARTMENT OF CORRECTIONS
The District of Columbia Jail
200 19th Street, S. E.,
Washington 3, D. C.

April 24, 1957

Bernard Dunau, Esq.
Jaffee & Dunau
Law Offices
912 Dupont Circle Building, NW
Washington 6, D. C.

Re: Dandridge, Clarence B.
DCDC# 20124
Colored Male

Dear Sir:

This inmate was admitted to the Jail Infirmary on October 18, 1956 with a diagnosis of epididymitis, an infection of the epididymis, an organ intimately related to the testicle, and probably secondary to old venereal infection. He was treated with antibiotic drugs, bed rest, and suspension of the testicles. While in the Infirmary he was seen in the Genito-urinary clinic at D. C. General Hospital on October 25, 1956. He was discharged as cured November 5, 1956, but was treated for residual urethral stricture in the same clinic on November 21, and December 20, 1956 and January 17, January 24 and February 14, 1957. He was returned to the D. C. Jail from Lorton Reformatory on April 19th for a return visit to the clinic for purpose of stricture dilatation.

Very truly yours,

/s/ Richard V. Mattingly, M.D.
RICHARD V. MATTINGLY, M.D.
Senior Medical Officer
D. C. Jail

cc: Col. Reid
Chrono

RVM/wk
Received April 25, 1957
/s/ B. Dunau

21 **Exhibit "B" to Affidavit**

JAFFEE & DUNAU
912 Dupont Circle Building, N.W.
Washington 6, D. C.

April 25, 1957

Dr. Richard D. Mattingly,
Senior Medical Officer
District of Columbia Jail
200 19th Street, S. E.
Washington 3, D. C.

Re: Clarence B. Dandridge
DCDC No. 20124

Dear Dr. Mattingly:

Thank you for your letter of April 24, 1957, with respect to Mr. Clarence B. Dandridge.

Mr. Dandridge tells me that he suffered great pain, that there was considerable swelling in the region of the testicles, and that ice packs were administered to him in connection with his treatment for epididymitis. This appears to correspond with the following description from Lowsley and Kirwin, Clinical Urology, vol. 1, p. 207 (3d ed. 1956):

> The symptoms of acute gonococcal and nonspecific epididymitis are similar, except that in the latter cases they are usually less severe. Occasionally, the onset will be mild, but as a rule there is great pain, tenderness, and swelling of the epididymis, accompanied by chills, fever, nausea, and prostration. Sometimes the pain radiates to the rectum, lower back, or lower part of the abdomen, and there is frequently inguinal discomfort and pain along the cord. Motion exaggerates the discomfort and walking may be impossible.

It would be important to Mr. Dandridge that he had suffered great pain. Would you therefore write me telling the particular symptoms that Mr. Dandridge had, the pain which he endured, and that cold applications were part of the treatment.

Thank you very much for your cooperation.

Very truly yours,

/s/ Bernard Dunau

Exhibit "C" to Affidvait

GOVERNMENT OF THE
DISTRICT OF COLUMBIA
THE DEPARTMENT OF CORRECTIONS
The District of Columbia Jail
200 19th Street, S. E.
Washington 3, D. C.

April 26, 1957

Bernard Dunau, Esq.
Jaffee & Dunau
Law Offices
912 Dupont Circle Building, N. W.
Washington 6, D. C.

Re: Dandridge, Clarence B.
DCDC# 20124
Colored Male

Dear Sir:

Ice packs were used as adjunct treatment to antibiotic therapy and you are correct in assuming that this is a painful condition.

Very truly yours,

/s/ RICHARD V. MATTINGLY, M.D.
RICHARD V. MATTINGLY, M.D.
Senior Medical Officer
D. C. Jail

cc: Col. Reid
Chrono
Jacket

RVM/wk
Received April 29, 1957
/s/ B. Dunau

23 **Exhibit "D" to Affidavit**

GOVERNMENT OF THE
DISTRICT OF COLUMBIA
Department of Public Health
District of Columbia General Hospital
19th and E Streets, SE.
Washington 3, D. C.

May 3, 1957

Mr. Bernard Dunau
Attorney at Law
912 Dupont Circle Building, N.W.
Washington 6, D. C.

Re: Clarence Dandridge
338 McLean Ave., S.W.

Dear Mr. Dunau:

In reply to your recent request, the following summary of hospitalizations is submitted in the case of above-named patient.

This 42-year old man was first admitted on July 22, 1952, with chief complaints of fever, lower abdominal pain and diarrhea. Physical examination revealed temperature of 104.8°, bilateral costovertebral angle tenderness and distention of abdomen. Examination of urethra and attempt to pass catheter revealed a urethral stricture to be present. The urethra was dilated, and the patient was placed on antibiotics. A second dilatation was done on July 29, and an indwelling catheter was inserted. He responded well to treatment and was discharged, after removal of catheter, on July 29, 1952.

The patient was admitted again on January 22, 1954 and was treated for pneumonia. He was discharged on restricted activity January 29, 1954.

The last admission for this patient was on September 15, 1956 by transfer from the District Jail. Complaint was of severe right flank pain of three days duration. Following admission, he developed urinary frequency and burning on urination. KUB revealed a calcific density in the region of the bladder. Intravenous pyelogram study was normal. Cystoscopy was unsuccessful because introduction of the catheter was obstructed by multiple urethral strictures. Urethral dilatation was then done under general anesthesia. The patient was diagnosed as multiple urethral strictures with acute cystitis. Following dilatations and

antibiotic therapy, hospital course was uneventful, and the patient was discharged on September 29, 1956.

This patient was attended clinic on seven occasions since his discharge from the hospital. On most of these visits urethral dilatations have been done. His last clinic visit was on May 2, 1957. He was discharged on gantrisin and advised to return in four weeks.

Very truly yours,

/s/ WILLIAM W. BAIRD
William W. Baird
Registrar

Received May 4, 1957
/s/ B. Dunau

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24 IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Opposition to Motion for Leave to File Affidavit—Filed May 16, 1957

Comes now the United States by its attorney, the United States Attorney, and opposes appellant's motion for leave to file affidavit. Appellant's motion is in aid of an appeal from a judgment of conviction entered on a plea of guilty. At all stages he was represented by counsel, involving a hearing before imposition of sentence at which he sought, but was denied, leave to withdraw his plea. The sole error on appeal concerns his claim by reference that leave to withdraw the plea of guilty should have been granted. This is no ordinary appellate claim of error because the mere denial is of no significance. The power exercised by the court was discretionary under Federal Criminal Rule 32(d), and to have to show use of this power is not sufficient since the burden is upon appellant, under familiar principles, to show an abuse.

Directed to this claim of error appellant seeks now to introduce at the appellate level evidentiary considerations which he feels relevant to the issue of whether leave to withdraw the plea should have been granted. It is obvious from their tenor that they were not presented for the con-

sideration of the trial judge even though appellant was represented by counsel at all stages below.

Especially as the appeal involves a claimed abuse of discretionary power by a judge who saw the witnesses and had sole power to decide such an attempt to adjudicate facts *de novo* at the appellate level is doubly barred on familiar principles, therefore, the Government vigorously opposes the motion.

Wherefore, it is respectfully submitted that the motion be denied. However, it is further submitted that if the relief sought be granted that the Government be permitted to file counter affidavits.

s/ Oliver Gasch
OLIVER GASCH,
United States Attorney.

s/ Lewis Carroll,
LEWIS CARROLL,

Certificate of service (omitted in printing)

Assistant United States Attorney.

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26 IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Before: EDGERTON, *Chief Judge*, PRETTYMAN and BURGER, *Circuit Judges*, in Chambers.

Order Granting Motion for Leave to File Affidavits—June 19, 1957

Upon consideration of appellant's motion for leave to file an affidavit of appellant dated April 25, 1957, and an affidavit of appellant's counsel dated May 3, 1957, and exhibits attached thereto, and of appellee's opposition, it is

ORDERED by the Court that the aforesaid motion be granted and that the Clerk be, and he is hereby, directed to file said affidaivts and exhibits forthwith.

Per Curiam.

Dated: June 19, 1957.

27 IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Supplemental Memorandum of Appellee and Affidavit—Filed June 20, 1957

Comes now the appellee, and pursuant to the order of the Court granting the oral motion of appellee to file a supplemental memorandum and affidavit in reply to the affidavits of appellant, represents unto the Court the following:

Appellant's affidavits consist of a statement by appellant concerning the facts of the offense and his plea of guilty, and material in support of his contention that he was so ill when he entered the plea of guilty that he did not really know what he did.

The attached affidavit of appellant's appointed trial counsel completely refutes appellant's contention that he was so ill that he did not understand the proceedings. It indicates that appellant was in good health, mentally alert, and fully advised of his rights.

In appellant's brief (Br. 5), it is set forth that one month prior to the time appellant appeared before Judge Holtzoff and entered his plea of guilty appellant was admitted to the hospital suffering with urological ailments which necessitated his confinement from September 15 to September 29. However, the records shows that he was able to appear in court for trial five days later (although trial was continued because no court was available). He appeared before the court to enter his plea of guilty (evidently ready to proceed with trial)on October 16, 1956, but was readmitted to the jail infirmary two days thereafter with a diagnosis of "epididymitis" (Br. 5). He was discharged therefrom on November 5, 1956.

28 However, he was well enough on October 21, 1956, during his stay in the infirmary to request in writing permission of the court to withdraw his plea (J. A. 3-4).

The fact that appellant was suffering from a type of epididymitis is not sufficient to show that he was not his normal self, and in full control of his faculties on October 16, 1956. However, assuming that appellant has a disease

of the epididymis, it should be noted that it is the most common of all introscrotal inflammations.[1] The gonorrheal type recedes in severity after several days, and is followed by gradual recovery after one or two days.[2] The non-specific type is liable to periods of recurrence.[3] Post-operative epididymitis may develop weeks or months after an operation, with subsequent periods of recurrence.[4] If a testical is involved, surgery results in prompt improvement.[5] The traumatic type of this ailment may be brought on by riding a bicycle, etc.[6] In the specific type of epididymitis (tubercular) the progress is from dormant to subacute and acute.[7]

In Colby, *Esential Urology*, Third Edition, 1956, it is stated at page 583: "The onset of acute epididymitis is *typically sudden*[8] with a rise in temperature and localized tenderness. Pain may be severe." And in Barnes and Hadeley, *Urological Practice*, 1954 Edition, it is stated at page 208: "Acute Epididymitis. The *sudden onset* of acute painful, very tender swelling of the epididymis *is characteristic* of the pyogenic and gonorrheal varieties of epididymitis.[9]

Thus, the acute stage of the illness that appellant found himself in two days after he entered his plea of guilty could have occurred, and probably did occur, after he left court. There is no mention that he was in pain on October 16, 1956. It is certain that if appellant had been suffering from the symptoms that he describes (Br. 15), and
29 that are delineated by medical authorities cited herein, and Lowsley and Kirwin, *Clinical Urology*. vol. I. p. 207 (third Edition 1956), and set forth in appellant's Brief at pages 14-15, neither the court nor his attorney would have permitted the plea. It is further certain that such symptoms could not be hidden from the

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[1] Campbell, *Urology*, vol. I, p. 693 (1954 Ed.).
[2] ibid, 693.
[3] ibid, 694.
[4] ibid, 695.
[5] ibid, 696.
[6] ibid, 696
[7] ibid, 700.
[8] Emphasis supplied.
[9] Emphasis supplied.

Judge, prosecutor, counsel and the deputy marshals in the cell block.

Respectfully submitted,

s/ Oliver Gasch
OLIVER GASCH,
United States Attorney.

s/ Lewis Carroll
LEWIS CARROLL,
Assistant United States Attorney.

ALFRED BURKA,
s/ Alfred Burka
Assistant United States Attorney.

Certificate of Service (omitted in printing)

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30 **Affidavit in Support of Supplemental Memorandum**

DISTRICT OF COLUMBIA) SS:

H. Nathaniel Blaustein, after first being duly sworn deposes and says:

I am an attorney with offices in the Tower Building, District of Columbia, and duly addressed to practice law in the District of Columbia.

In October I was appointed by the District Court to represent one Clarence E. Dandridge who had been indicted for assault and for carrying a gun. My records indicate that I conferred with the defendant several times and, after ascertaining the defendant's version of all the facts, I advised him as to his rights. On October 16, 1956, which was the date set for trial in this action, I appeared in Court with the defendant and, after a discussion at the bench between the trial judge, Government counsel, and myself, I spoke again with the defendant advising him what had transpired and fully advising him as to all his rights including that of a jury trial. He then advised me that he would like to change his plea from not guilty to guilty.

During this whole time in the courtroom, the defendant never once mentioned or complained to me that he felt ill or had pain. He spoke coherently and had perfect com-

posure and appeared to be in good health. He pleaded guilty with a full awareness that he was going to be sentenced for a crime at a later date. As stated on page 5 of the transcript, I advised the Court, "I have fully explained the circumstances and the consequences of the act to the defendant. I asked him to voluntarily make up his mind as to what he wanted to do. He has come to the conclusion that he will throw himself upon the mercy of the Court." The Court then asked me if I had apprized him of his rights, to which I replied, "I certainly
31 have, Your Honor." The Court then asked the defendant if he admitted that he committed the offense to which he proposed to plead guilty. To this the defendant replied in the affirmative.

I interviewed several of the defendant's witnesses including his wife, but did not receive any information material to the defendant's defense.

I am submitting this affidavit as to my best recollection of all the facts regarding the withdrawal of defendant's plea and at the request of the Government.

s/ H. NATHANIEL BLAUSTEIN

Sworn and subscribed to before me this 14 day of May, 1957.

[SEAL] s/ BERTHA M. FANT,
Notary Public, District of Columbia.

My commission expires: May 1, 1960.

33 Clerk's Certificate (omitted in printing)

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34 SUPREME COURT OF THE UNITED STATES

No. 137, Misc. October Term 1957

Order Granting Petition for Certiorari and Motion for Leave to Proceed in Forma Pauperis—November 12, 1957

ON PETITION for writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma paupis be, and the same is hereby,

granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 609 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

November 12, 1957.

☆ U. S. GOVERNMENT PRINTING OFFICE 1958—453397/P. O. 956